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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 669,477	09 25 2000	Peter Michael Murphy	CH2751 US NA	2960

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 08 20 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/669,477

Applicant(s)

MURPHY ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 08 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 9-18 is/are pending in the application.
- 4a) Of the above claim(s) 14-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 9-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10-12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Amendment

1. Amendment A, submitted as Paper No. 9 on April 8, 2003, has been entered. Claims 1-8 have been cancelled as requested. Thus, the pending claims are 9-18, with claims 14-18 being withdrawn as non-elected.
2. The indicated allowability of claims 9-13 is hereby withdrawn due to the following new rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 9-13 are rejected under 35 U.S.C. 102(e) as being anticipated by US 5,861,074 issued to Wu.

Applicant claims a carpet underlay composite comprising:

- (a) a fibrous substrate of a woven or nonwoven fabric made of fibers including polyester, polyolefin, polyamide, or cellulosic fibers,
- (b) an optional control layer of polyethylene, polypropylene, or copolymers or blends thereof, wherein said layer is capable of reducing the MVTR of the composite,

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(c) a tie layer comprising a copolymer of ethylene and vinyl acetate monomers (i.e., EVA), and

(d) a moisture vapor permeable film of silicone rubber, polyurethane, polyether ester, polyether amide, polyurethane ester, polyurethane ether, polyvinyl alcohol, or copolymers or blends thereof,

wherein the composite is impermeable to liquids and differentially permeable to moisture vapor.

Wu discloses a composite laminate comprising a film extruded or adhered to a fibrous web (abstract, col. 1, line 63-col. 2, line 6, and col. 2, lines 34-36). The fibrous web may be a nonwoven fabric made of polyethylene, polypropylene, polyester, rayon, cellulose, or nylon fibers (col. 3, lines 50-52). The film may be an elastomeric polymer such as polyolefin, poly(ester-ether), poly(ether-amide), or polyurethane (col. 3, lines 26-49). The laminate is impervious to fluid and permeable to air and vapor (col. 3, lines 15-25). The film and fibrous web may be adhesively bonded together with a hot melt adhesive, water base adhesive, or solid base adhesive (col. 4, lines 5-7). In one embodiment, a SONTARA 8000 polyester nonwoven is adhesively laminated to a HYTREL 8206 film with an EVA hot melt adhesive (col. 10, lines 55-57). Note applicant also teaches the SONTARA 8000 fabric and the HYTREL 8206 film in the specification, page 16, lines 5-7 and page 17, lines 8-10.

With respect to the carpet underlay recitation, said recitation has not been given patentable weight because it occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness

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but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

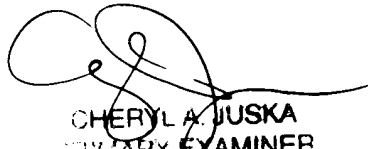
With respect to the optional control layer recited in claim 9 and 11, it is noted that since said layer is optional, it does not accord any patentable weight. Thus, claims 9-13 are anticipated by the cited Wu patent.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA
EXAMINER

cj
August 11, 2003